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SUMMARY RECORD OF THE 1299th MEETING

Held at Headquarters, New York,
on Thursday, 24 March 1994, at 3 p.m.

Chairman: Mr. ANDO

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The meeting was called to order at 3.20 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Third periodic report of Costa Rica (continued) (CCPR/C/70/Add.4)

1. At the invitation of the Chairman, Mr. Segura and Mr. Tattenbach (Costa Rica), took places at the Committee table.

2. The CHAIRMAN said that the Costa Rican delegation would proceed to answer questions held over from sections I, II and III of the list of issues.

3. Mr. SEGURA (Costa Rica) said that, because of financial difficulties, no one from the Ministry of Justice had been able to come to New York to reply to the Committee's questions. Replying to a question raised by Mr. Mavrommatis concerning the proliferation of Offices for the protection of various rights and conflicts of competence of such Offices, he said that there were no conflicts of competence as the Office for the Protection of Citizens, which dealt with all human rights matters, reported to the Legislative Assembly while the Ministry of Justice, which also had a human rights branch, reported to the Executive. With respect to Mr. Herndl's question on the functions of each Office, he felt that he had already answered that question at the previous meeting. Concerning Mr. Prado Vallejo's question on the issue of unconstitutionality in paragraph 215 of the report, as far as he knew, an action of unconstitutionality could not be brought against inertia of and omissions and abstentions by public authorities; an error had probably been made. The issue would be addressed in the next periodic report. Concerning the amendments made to article 48 of the Constitution, he noted that the result of such amendments had been to ensure that international treaties and other instruments in the area of human rights were on a par with the country's constitutional provisions.

4. Turning to the question of how the work of the different human rights protection offices was evaluated, he said that monthly analyses were carried out and were submitted in the form of a public report during the first few days of each month to each human rights protection office. The reports included analyses of admissible cases, public complaints about services, interviews of public officials and comments of medical doctors. They did not include cases that had not yet been settled or those which any interested party had asked should be kept confidential.

5. With regard to the question as to whether the Covenant was at the same level as the Inter-American Convention on Human Rights, he noted that it had the same ranking.

6. Concerning the abolition of the death penalty (sect. II (a) of the list of issues), he said that Costa Rica had not yet ratified the Second Optional Protocol to the Covenant because the legislative procedures were extremely complicated and all international treaties and agreements were usually dealt with last on the legislative agenda. Concerning the rules and regulations governing the use of weapons by the police and security forces (sect. II (b)), he said that Executive Decree No. 3378-G of the Ministry of Justice established very strict regulations on the use of weapons by the police and security forces

(Mr. Segura, Costa Rica)

personnel. Moreover, both the Ministry of the Interior and the Ministry of Public Security regularly organized courses on human rights with special emphasis on the United Nations Standard Minimum Rules for the Treatment of Prisoners. Agents of the Ministry of Public Security were required to report weekly on the amount, type and condition of weapons in their possession and possession of weapons and ammunition by private individuals was also regulated. Unfortunately, the regulations pertaining to the use of firearms by members of the police and security forces had, on occasion, been violated. Such violations were investigated by the relevant ministry and offenders were punished. Very serious cases were immediately brought before the courts.

7. Concerning torture, inhuman or degrading treatment or punishment (sect. II (c) of the list of issues) he said that there had been complaints of torture and degrading treatment, and that the individuals involved had been brought before the courts. As for specific measures taken by the authorities to ensure the strictest observance of article 7 of the Covenant (sect. II (d)), he said that article 127 of the Penal Code strictly prohibited the use of torture, cruel, inhuman or degrading treatment. It was also forbidden to subject people to medical and scientific experiments without their consent. In December 1993 Costa Rica had ratified the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. Concerning section II (e), he said that, under article 40 of the Constitution, any statement obtained by means of force was null and void, thus, any confession or testimony obtained under duress could not be used in court proceedings. Turning to section II (f) of the list of issues, he indicated that, under the provisions of articles 197 and 164 of the Penal Code and 44 of the Constitution, a person could not be held incommunicado for more than 48 hours without a court order, such detention could be extended only up to a maximum of 10 consecutive days and in no case did it preclude judicial inspection.

8. Mr. BRUNI CELLI asked, with respect to section II (a), whether the Committee could infer from the fact that the executive had sent a bill to the Legislative Assembly for ratification of the second optional protocol of the Covenant that the Executive did indeed have plans to ratify that protocol. Concerning section II (b), he wondered whether the Government had encountered any specific problems in registering the weapons that had been brought into Costa Rica after the civil war in Nicaragua or whether many of those weapons brought in clandestinely were still in the possession of police and security forces; such a situation could give rise to violation of regulations concerning the use of weapons by police and security forces. Regarding section II (c), the Committee would welcome additional information on the outcome of the States' investigation into complaints of torture, cruel, inhuman or degrading treatment.

9. Mr. PRADO VALLEJO asked whether the various human rights bodies in Costa Rica had the power to investigate complaints of human rights violations and take action against offenders.

10. He also sought information about what the Government had done in connection with a letter from Amnesty International concerning complaints about the detention of three politicians, two cases of extrajudicial executions, and complaints of torture and ill-treatment, and what response had been made to Amnesty International.

(Mr. Prado Vallejo)

11. He recalled that in December 1992 a report had been submitted to the Costa Rican Commission for Human Rights which had indicated, inter alia, that the judiciary was not doing anything to try to reduce the number of persons illegally detained in prisons and that there had actually been an increase in the number of illegal detentions. He asked whether the Government had done anything to investigate that situation and whether it had taken any steps to remedy it. That report had also indicated that police officers were being sent to military or paramilitary training centres; the purposes of such centres would not seem to correspond to those of a police force.

12. He had a communication from banana plantation workers in Costa Rica who alleged that they had been poisoned in the course of their work and that lawsuits had been brought against foreign companies and the Government. That situation would constitute a danger to the right to life. He asked whether the Government was doing anything about those complaints, which had been publicized at the international and national levels.

13. Mrs. CHANET recalled that in 1992, members of the rural guard had been charged with torture, ill-treatment and even extrajudicial executions, particularly against the Indian population, and that some arrests had been made; she asked what had happened subsequently, whether penalties had been imposed, or whether the individuals had been acquitted. She also asked for details about the humiliating treatment of transvestites who, it appeared, were often arrested by the police and subjected to ill-treatment.

14. At the time of the consideration of the second periodic report, there had been some uncertainty about the rules applicable to pre-trial detention; she asked for further information on those rules and on the maximum duration of such detention. She also requested information on secret detention, in the light of the Committee's general observations on article 7 of the Covenant, and in particular whether such detainees were allowed medical visits, whether lawyers were also required to maintain secrecy and whether there was a limit on the intervals between interrogations of persons held in secret detention.

15. In paragraph 192 of the report, it was indicated that in the light of judgment No. 282-90 of the Constitutional Tribunal, there was no obstacle to the exercise of the right of appeal in Costa Rican criminal procedure. However, that judgment did not cover all aspects of the right of appeal. She asked how the judgment would be implemented and how the principles embodied in it would become law.

16. She asked what follow-up there had been to the bill to amend article 474 of the Code of Criminal Procedure and establish a higher criminal court of cassation (paras. 184 and 185).

17. Mrs. EVATT said that she, too, sought information on the outcome of the charges instituted against the rural guard in connection with a drug raid in February 1992, which had been brought to the Committee's attention by Amnesty International. Amnesty International had also drawn attention to instances of lengthy detention without trial; she asked what steps were being taken to ensure that there was no repetition of such situations and to ensure that the habeas corpus rule was respected, especially in drug offenses.

(Mrs. Evatt)

18. In relation to article 9, paragraph 5 of the Covenant, she recalled that it had been indicated in paragraph 27 of the second periodic report (CCPR/C/37/Add.10) that efforts were under way to amend article 108 of the Penal Code; according to paragraph 230 of the current report there were no plans to amend the article; she asked whether anything would be done about that article.

19. With regard to article 10 of the Covenant, she recalled that at the time of the consideration of the second periodic report, representatives of Costa Rica had said that the prison system was very overcrowded. The establishment of the Office for the Protection of Prisoners was a favourable development; however, she noted in paragraph 66 that the Office did not have representatives in all penal establishments in Costa Rica. She asked how easy it was for prisoners to contact the Office and whether the overcrowding situation had been improved. She was pleased to learn of the attention paid to female prisoners (para. 68) and asked whether the conditions of female and male prisoners were equal, and what proportion of prisoners were women.

20. Mr. WENNERGREN said that, in connection with the tragic events in February 1992 involving the rural guard, he understood that there were about 3,500 members of the rural guard; he asked how they were recruited, what kind of training they received and how much training they were given in constitutional rights and human rights matters. Since so many of them had abused their power in the incident in February 1992 it seemed that they were not fully aware of their obligations to respect the human person. He asked whether their training had been improved since then or whether there were plans to improve it.

21. He understood that there were about 6,000 members of the civil guard; he asked how they were recruited and what kind of training they received. He also asked whether there were other police bodies apart from the civil and rural guard, whether there were security forces, and how the police as a whole were organized and trained. Clearly since Costa Rica had no army, the police must operate in a sense as a military force, which would imply some participation in that kind of training.

22. In connection with paragraph 51, he asked what progress had been made in humanizing prisons and whether the requirements of the United Nations Standard Minimum Rules for the Treatment of Prisoners were met in Costa Rican prisons. He asked how the prison system was organized, how many prisons there were, and whether there were prisons in rural as well as urban areas. In connection with paragraph 67, he assumed that the Office for the Protection of Prisoners was functioning in prisons other than the Buen Pastor prison. He asked how the Office functioned, whether it had dealt with many complaints, and how its activities were coordinated with the activities of the Office for the Protection of Detainees in the Prison System. In connection with paragraph 68, he asked whether there were special prisons for women or for juvenile offenders.

23. He asked whether he was correct in believing that administrative cases were dealt with in ordinary courts and what Costa Rica's experience had been in such cases; he asked how many cases there had been each year and whether citizens required lawyers when appealing against administrative decisions.

24. Mr. MAVROMMATIS said that in its questions on the rules and regulations governing the use of weapons by the police and security forces, the Committee had had in mind the Havana rules; he asked whether there were any rules calling for proportionality in the use of force, progressing from negotiation to non-fatal force to firearms. He also sought information about the 1992 incident involving the rural guard. Referring to paragraph 182, which stated that, under the Code of Criminal Procedure, the accused could appeal against a sentence by a court to two or more years' imprisonment and also against a sentence by a criminal judge to a term of imprisonment of over six months, he asked what the difference was between those two provisions.

25. Noting the statement, in paragraph 186, that the obstacle to appeal constituted by article 474 had been removed by judgement No. 282-90 of the Constitutional Tribunal he said, in practice, minor details could frustrate the exercise of the right of appeal, and therefore asked whether the bill to amend article 474 of the Code of Criminal Procedure and to establish a higher criminal court of cassation (para. 185) had been promulgated. He asked whether measures were being taken to familiarize judges with the Covenant, and also why the offence of obstruction of services, referred to in paragraph 188, was subject to imprisonment.

26. Mrs. HIGGINS said that the professionalism of the police force should not depend on the existence of a standing army. She sought further information about pre-trial detention; the questions asked at the time of the consideration of the second periodic report had been answered only in terms of the conditions for bail. Information was needed on the legal regime of pre-trial detention.

27. She asked about government policy in relation to the human rights problems arising from the increase in crime and whether there would be any change in the categorization of offences that were subject to imprisonment or in prison facilities; she hoped that it was not necessary to make use of police cells.

28. The Committee had heard on a few occasions of large-scale round-ups of alleged criminals, involving several hundred people, after which only a few people had been charged or found guilty; she asked what legal regime had been followed in carrying out such round-ups and whether it was compatible with Costa Rica's legal obligations under the Covenant.

29. Mr. SEGURA (Costa Rica), replying to the question concerning alleged human rights violations by the rural guard, said that the accused guards had been arrested but were currently free on bail because they had no previous police records. While the investigations had revealed that two members of the indigenous community of Costa Rica had indeed been killed by the guards near to the Panamanian border, the report of Amnesty International had misrepresented the facts. He acknowledged, however, that the national debate sparked by the report had been extremely useful.

30. On the question of the national legislation governing the possession and use of weapons, Costa Rican law expressly prohibited possession of weapons with certain characteristics, including chemical and bacteriological weapons. The act in question also listed those weapons which could be legally owned.

(Mr. Segura, Costa Rica)

31. He explained that the Office for the Protection of Human Rights was empowered to take action ex officio whenever it deemed that the human rights of individuals had been violated.

32. Mr. TATTENBACH (Costa Rica) said that the Costa Rican Constitution of 1949 had abolished the army as a permanent institution, which meant that it could be reorganized in the event of external aggression. It would be an error, however, to think that Costa Rica lacked security forces. Every independent State needed to protect its frontiers, its airspace and its territorial sea. In Costa Rica, the civil guard fulfilled those responsibilities. The civil guard was comparable to the "carabineros" found in certain other countries, that is to say, not quite an army and somewhat more than a police force. It was different from an army in a number of important respects. It was administered by the civil authorities, who were themselves subject to parliamentary oversight, and its members were subject to civil, not military, law. Its budgetary resources were allocated in the general budget of the State and approved by the legislative authorities. It had no heavy or offensive weapons, such as tanks and warplanes, but light, defensive weapons. Moreover, its members spent their time not in barracks but in the frontier regions performing useful tasks.

33. As for the rural assistance guard, the very name of that institution reflected its civil character and its emphasis on providing assistance, particularly to rural communities. While certain members of the guard might have committed abuses, the public reaction had been overwhelmingly one of rejection of such acts.

34. On the subject of pre-trial detention, good intentions of the State were not always matched by the reality. Nevertheless, the percentage of pre-trial detainees was lower in Costa Rica than in many other countries. Indeed, laws favouring the release of accused persons before their trial were severely criticized by the public because of the danger to society which such persons sometimes represented. Finding a balance between the need to ensure public safety and the need to protect the human rights of detainees was no easy task.

35. On the subject of recruitment policies, applicants were required to have a high school diploma and must have no police record. Training in the use of light weapons was provided in a national training academy and members occasionally received scholarships for more advanced military training abroad.

36. Mr. SEGURA (Costa Rica) said that penitentiary officials received special training in the field of human rights and had attended the recent training courses and seminars organized by the Inter-American Institute of Human Rights for the police forces of the region.

37. Compensation was not normally awarded to persons who had been unjustly detained. Where an individual so detained suffered severe injury or damage, it was for the courts to determine whether compensation should be paid.

38. Efforts had been made to alleviate prison overcrowding by releasing some prisoners - those whose conduct had been good - provided that they reported each week to their respective prisons. Unfortunately, he had no information on the percentage of female prisoners in Costa Rican penitentiaries.

(Mr. Segura, Costa Rica)

39. Under Costa Rican law a person could be held incommunicado for up to 10 days if there was reason to believe that he would contact his accomplices or otherwise obstruct the investigation into the case. Nevertheless, such prisoners enjoyed certain rights, including the right to perform certain civil acts, to receive books and to be visited by a judicial inspector.

40. Mr. TATTENBACH (Costa Rica), replying to the question put by Mr. Prado Vallejo concerning the health of workers in banana plantations, said that the reports had exaggerated the situation. Nevertheless, the reproductive capacity of a number of workers appeared to have been affected by the improper use of pesticides and a claim had been filed against the plantation in question. The incident had prompted the adoption of stricter measures for the use of pesticides and had also aroused interest in the possibility of dispensing with pesticides altogether and growing "organic" bananas.

41. Mr. SEGURA (Costa Rica), replying to the question concerning the legal defense of indigent detainees, said that the Office for the Protection of Human Rights provided such detainees with the services of itinerant attorneys. In addition, since there was no military service in Costa Rica, university students were required to provide service to the State in their field of study. Accordingly, law students provided 18 months of service free of charge to detained persons who could not afford their own legal counsel.

42. While he could not give the exact number of prisons in Costa Rica, in addition to State prisons in the capital, each province had its own prison system, including special prisons for young offenders and for women. Persons arrested by rural guards were detained in the corresponding provincial prison. Finally, the Office for the Protection of Human Rights and the Ministry of Justice had instituted programmes aimed at humanizing places of detention in Costa Rica.

43. Turning to the questions on section III of the list of issues, he said that the Roman Catholic Church (sect. III (a)) did indeed have a privileged position in Costa Rica under article 75 of the Constitution, a very anachronistic provision which, however, had proven very difficult to repeal because of pressure from vested interests. The Roman Catholic Church was to receive support from the State as the State religion, without, however, impeding the free exercise of other worship that was not opposed to universal morality or good customs. Thus, the full freedom of other religions was guaranteed.

44. Mr. TATTENBACH (Costa Rica) pointed out that Costa Rica had no Concordat with the Vatican, which might actually have been much more onerous. Moreover, the country had a long tradition of separation of Church and State.

45. Mr. SEGURA (Costa Rica), responding to questions regarding telephone tapping or electronic bugging (sect. III (b) of the list of issues), said that article 221 of the Code of Criminal Procedure, dating from 1973, had on 22 November 1990 been declared unconstitutional, giving retroactive right of redress to any victim. The provision, which allowed court-ordered wire-tapping, had been found to violate article 24 of the Constitution, which stated that the private documents and written or oral communications of inhabitants of the Republic were inviolable.

(Mr. Segura, Costa Rica)

46. Currently, there were two bills before the Legislative Assembly, one a draft law regulating wire-tapping and the other a draft law on wire-tapping and the seizure and examination of private documents. The latter bill, a follow-up to the revision of article 24 of the Constitution that now allowed evidence obtained through wire-tapping to be used in the courts, had been drafted to replace the 1973 provision recently struck down. The bill regulated the types of offences in respect of which wire-tapping and interception of documents were permissible, the length of time such wire-tapping was acceptable and the responsibilities of officials in charge of the use and control of such procedures. It classified offences according to the threat they posed to the public good, and their social, economic and political repercussions, and the difficulty of using other means to verify their commission. A Wire-Tapping Centre was to be set up to allow the courts to use wire-tapping as an effective means of investigation. The bill also proposed amending article 198 of the Penal Code to allow bugging of direct conversations, except those between an accused and his defence lawyer, and except in the inviolable location of the home unless it was suspected that a crime was in progress. The bill also regulated the seizure and examination of private documents for use as evidence in court and it balanced the individual and the public interest by allowing complaints to be brought by those affected. It should be noted that the draft law was still just that, and that there was great opposition to it in the Legislative Assembly. As to the availability of the relevant technology in Costa Rica, all aspects of the Internet system were in place and it was in fact able to record telephone conversations, faxes and the like.

47. With regard to the rights of minorities (sect. III (c) of the list of issues), he said that no further response was needed beyond what he had said in his general introduction, because Costa Rica had recently reported in detail on that question to the Committee on the Elimination of Racial Discrimination (CERD).

48. Regarding the representation of minorities in the Government (sect. III (d) of the list of issues), he said that of the 57 members of the Legislative Assembly none were indigenous and none were blacks. In the executive branch, 4 of the 34 members were women and 1 was black. It was difficult for Costa Rica to achieve proper representation of minorities.

49. Mr. PRADO VALLEJO said that the requirement that a Roman Catholic bishop must approve the teaching of religion would obviously favour that faith, and he wondered whether there was any plan to do away with that regulation.

50. Mrs. EVATT, referring to the freedom of association under article 22 of the Covenant, observed that the International Labour Organization (ILO) had recently criticized the Solidarista associations in Costa Rica as unrepresentative of workers because they had been set up by employers; it had further found evidence of anti-trade-union discrimination in the country, and unequal treatment of employers' associations and trade unions. There seemed to be penalties on union organizers which impinged on the very important right of association, and it was disturbing that there was no protection of the right of agricultural workers, especially in the sugar and coffee plantations, and of other vulnerable groups, to organize. Practices such as regular firing and rehiring at lower wages, and the blacklisting of those who tried to stand up for workers' rights, seemed to

(Mrs. Evatt)

be commonplace. Costa Rica had been asked by ILO to pass legislation to guarantee the workers' right to hold meetings in the workplace and she wondered whether any such legislation had been adopted. Apparently, Labour Ministry officials conspired regularly with landowners to have workers paid less than the minimum wage and work overly long hours under bad conditions - all factors that undermined the right of association. Since fear would obviously keep any individual from taking action, she wondered what redress was available collectively to workers in Costa Rica, and whether the Government planned to inquire into the situation and take appropriate action. Costa Rica's human rights record was so outstanding that such an issue should not be allowed to detract from it.

51. Mr. HERNDL asked whether the Government actively supported the Solidarista associations, which were given a distinct advantage by the legislation of 1984 since trade unions could be set up only in companies with 20 or more workers and most firms were smaller. Such favouritism militated against the right of collective bargaining and, indeed, there had been a 1992 complaint to ILO regarding legislative restriction of collective bargaining in Costa Rica.

52. With regard to article 27, he pointed out that when the Covenant referred to minorities it meant ethnic, linguistic or religious minorities, not women. The third periodic report was vague and confusing on that point, even though the Committee had expressed concern at the time it had considered Costa Rica's second periodic report and had requested detailed information on the protection of minorities. It would be useful to know what the Office for the Protection of Human Rights was doing for minorities. Paragraph 19 of the report spoke of a bill replacing the Costa Rican Institute for Indigenous Affairs and amending the Indigenous Peoples Act, and he would like more information on why that was needed. He also would like to know what the recently established advisory board to the Office for the Protection of Human Rights (para. 23 of the report) would be doing on behalf of the indigenous population; and what kind of support (para. 26 of the report) was being contemplated for the indigenous population.

53. Mr. MAVROMMATIS said that the International Confederation of Free Trade Unions (ICFTU) had provided disturbing but reliable information regarding the Solidarista associations in Costa Rica. It was a regional phenomenon that seriously affected trade unionism by militating against collective bargaining and facilitating arbitrary dismissals and similar practices. It eroded efforts towards social justice in Costa Rica and he urged the Government and the newly established human rights bodies to look into it as soon as possible.

54. Mr. WENNERGREN observed that Costa Rica, apparently aware of the far-reaching violations of trade union rights in the country, had asked ILO for assistance in revising its outdated labour law on trade unions, and he wondered if it was in fact being reformed to bring it up to international standards.

55. With regard to freedom of religion, he believed that article 75 of the Constitution, which guaranteed the free exercise of "worship that is not opposed to universal morality or good customs", was not in accordance with the Covenant article 18 (3) of which referred only to limitations on the ground of "morals" and not custom. The term "worship" in the Costa Rican Constitution was ambiguous and might be in violation of article 18 (1) of the Covenant.

56. Mrs. HIGGINS asked, on the broader issues relating to freedom of association, whether trade union activities were permitted in the public sector and, if so, in which sectors workers were allowed to strike. An overall ban on striking would be too broad because not all were critical sectors. She also wondered what legal protection there was for collective bargaining and whether dismissal for forming or joining a trade union was forbidden by law.

57. It had disturbed her to hear the representative of Costa Rica state that he had deliberately decided not to answer a specific question in section III (c) of the list of issues because it would repeat what Costa Rica had reported to another human rights body.

58. Mr. BRUNI CELLI said, regarding article 26, that Costa Rica had a sizable group of foreign refugees who had originally fled the war in Nicaragua but had now become, as it were, economic refugees. He would like information on their numbers, their working conditions and salaries, the nationality of their children, and the kind of police protection afforded them.

The meeting rose at 6.10 p.m.